



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

TRG

Docket No: 2158-98

30 May 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 23 May 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you reenlisted in the Navy on 14 October 1994. On 10 August 1995 you received nonjudicial punishment (NJP) for fraternization and sexual harassment. The punishment imposed was a reduction in rate from SW1 (E-6) to SW2 (E-5).

Regulations allow for the destruction of NJP evidence after a period of two years. Therefore, the evidence from the 10 August 1995 NJP was unavailable to the Board. The documentation you submitted is very incomplete.

The documentation you provided shows that you submitted an appeal of the NJP. You have submitted one page of what appears to be the endorsement on the NJP appeal. In paragraph 11 of the endorsement, the commanding officer states that you admitted making improper phone calls to a BUCN (E-3), had her to your home and to the beach, and used indecent language. The commanding officer also concluded, in effect, that the punishment was not too severe given the evidence which showed that you continued making sexual comments after you had been asked to stop. After the NJP you made several requests to be reinstated to SW1, all of which were denied. You transferred to the Fleet Reserve on 31

March 1999 in the rate of SW2.

You contend in your application that the charge of fraternization should be dismissed because it does not apply to anyone below chief petty officer. Concerning the sexual harassment charge, you contend that your comments could not be offenses because your accuser was promiscuous and used indecent language herself.

With your application you have provided the results of a polygraph which indicates that you were truthful when you denied making phone calls to the BUCN after 17 February 1995, and she never told you to leave her alone. You were also found truthful when you stated that you were never counseled to stay away from the BUCN, as alleged by your command.

The Board was aware that the staff judge advocate for the general court-martial convening authority would have considered the legal sufficiency of the charges in connection with the review of your NJP appeal. In addition, the Board was aware that there is nothing in Navy Regulations which would prohibit fraternization charges against a first class petty officer. The Board weighed the results of the polygraph against the incomplete record and the evidence which shows that you admitted committing the offenses. The Board concluded that the commanding officer did not abuse his discretion when he imposed NJP. The Board further concluded that given the nature of the offenses, the punishment was not too severe.

Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director